be followed and the matters to be raised if negotiation was to be entered into. Paragraph 7 reads — "Different name should be given for tree scrapping. Try to negotiate with the management for the success." As submitted on behalf of the Minister, this letter clearly advised the first applicant to enter into negotiation. I cannot see how any agreement could be reached when the first applicant did not even enter into negotiation with the employers.

On the evidence I find that when the employers issued the instructions that the workers should carry out the cleaning work, the first applicant took it upon himself that the employers had no right to issue those instructions.

As a matter of law, whether or not there was any negotiation, I cannot find anything which gives a president of a trade union, or any other office holder, for that matter, the right to issue instructions to the workers which in effect would amount to countermanding the lawful direction of the employers in the matter of work to be performed by the workers. If an office-bearer of a trade union had this right, the position of the employers would be untenable and I doubt very much if they could maintain discipline. On the facts that have been adduced, I find that the first applicant was in breach of discipline when he refused to obey the lawful direction of the employers. He was in more serious breach of discipline when he "instructed" workers not to do the work. I would also say that as president of the union he should have shown a greater sense of responsibility and restraint by entering into negotiation with the employers. For what he had done I find that his dismissal was justified and the Minister was right in refusing to interfere with the decision of the employers.

As to the second applicant, it is now said that the employers should have informed her of the provisions of section 17 of the Employment Ordinance, 1955. I have no doubt that a thoughtful employer would go out of his way to inform the spouse of these provisions, but I cannot see anything in law which requires him to do so. These provisions have been in the law for many years now and should be within the knowledge of an employed spouse.

The application is dismissed with costs to the first respondent.

Application dismissed.

Solicitors: *S. Sivasubramanian.*

PUBLIC PROSECUTOR v. SIA YOK HUA

[A.Cr.J. (Pawan Ahmad J.) December 4, 1973]
[Malacca — Criminal Appeal Nos. 1 & 2 of 1973]

Road Traffic — Driving without valid driving licence — Expired provisional driving licence — Insurance policy in force — Whether driver guilty of using motor vehicle without third-party insurance — Road Traffic Ordinance, 1958, ss. 74 and 79.

In this case the accused had been convicted of driving a motor cycle without a valid driving licence. He had an expired provisional driving licence but he had a third-party insurance policy which was in force. He was charged with using the motor cycle without third-party insurance but was acquitted as the learned magistrate held that he was covered by the policy of insurance which was in force. The Public Prosecutor appealed.

Held: section 79(j) of the Road Traffic Ordinance, 1958, makes it clear that although the accused had no valid driving licence, the insurance company were precluded from repudiating liability in respect of third-party risks and therefore the accused was at the material time duly covered by the policy of insurance. The appeal must therefore be dismissed.

[Editorial Note: Reference might be made to the cases of *Velusamy* v. *Public Prosecutor* [1974] 1 M.L.J. 15 and *Public Prosecutor* v. *Ung Ah Leng* [1974] 1 M.L.J. 84 where the learned judges held that section 79 of the Road Traffic Ordinance, 1958, did not affect the criminal liability of a person driving a motor vehicle.]

Cases referred to:-

(1) *Jones* v. *Welsh Insurance Corporation Ltd.* [1937] 4 All E.R. 149.
(2) *John* v. *Humphreys* [1955] 1 W.L.R. 325.
(3) *Devey* v. *Towle* [1973] Crim. L.R. 360.
(4) *T.S.B. Maniam* v. *Public Prosecutor* [1946] M.L.J. 39.

CRIMINAL APPEAL.

Abdul Murad bin S. Ismail (Deputy Public Prosecutor) for the appellant.

A. C. Vohrah for the respondent.

Pawan Ahmad J.: In Magistrate's Court Case No. 10B of 1972 the accused was tried on the following charges:

(1) Section 34A(1) of the Road Traffic Ordinance, 1958.

(2) Section 25(2) and 146(1)(d) of the Road Traffic Ordinance.

(3) Section 74(1) and 74(2) of the Road Traffic Ordinance.

At the close of the prosecution case the court amended the first charge to one under section 36(1) of the Road Traffic Ordinance. The accused pleaded guilty to the second charge and on the third charge the court found him not guilty. He was thus called to enter upon his defence in respect of the amended first charge only. At the end of the case he was found guilty on the amended first charge and was convicted and sentenced to a fine of $500 in default 3 months' imprisonment. In addition, his driving licence was endorsed. As to the second charge the accused was fined $100 i.d. 2 weeks' imprisonment.

Criminal Appeal No. 1 of 1973 is brought about by the Public Prosecutor from the order of acquittal on the third charge, whilst Criminal Appeal No. 2 of 1973 is by the accused from conviction and sentence on the amended first charge. I dismissed the appeal on the first charge against conviction. I allowed the appeal as to sentence and reduced the fine to $250. In his evidence before the Magistrate's Court, the accused stated that just before the accident, he was travelling at a speed of 20 miles per hour. He saw a child crossing from the right side of the road and that when he first saw the child he was about 30 feet away. I have scrutinized the record very carefully and I am unable to find any evidence of speed. Under such circumstances I consider a fine of $500 to be excessive especially when the accused has a clean driving licence.

Now coming to the appeal of the Public Prosecutor in regard to the third charge the policy of insurance Exhibit P5 under the heading "Authorised Driver" in the schedule reads as follows: —

"(a) The insured only.

Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been so permitted *and* is not disqualified by order of a court of law or by reason of any enactment or regulations in that behalf from driving a motor vehicle."

The policy is in respect of the period 1st April, 1971 to 31st March, 1972 (both days inclusive).

PW7, Sgt. 4359 stated in his evidence as follows:

"He had an insurance. He showed me an expired driving licence.... It was a provisional driving licence PDL 593154."

The evidence of this witness read with Exhibit P5, the insurance policy, clearly shows that on 21st November, 1971 which is the material date, the accused was in fact covered by a policy of insurance in respect of motor cycle No. BT 8622 which is the vehicle in question.

Section 79(j) of the Road Traffic Ordinance reads as follows: —

"Where a certificate of insurance has been delivered under subsection (4) of section 75 of this Ordinance to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any of the following matters —

....

(j) the driver of the motor vehicle at the time of the accident not holding a licence to drive or not holding a licence to drive the particular motor vehicle;

....

shall, as respect such liabilities as are required to be covered by a policy under paragraph (b) of subsection (1) of section 75 of this Ordinance, be of no effect."

It must be pointed out here that section 79 of the Road Traffic Ordinance was amended with effect from 15th January, 1968 by adding subsections (i), (j) and (k). The effect of the amendment in regard to subsection (j) as I understand it, is that even if the driver of the motor vehicle at the time of the accident is not holding a driving licence, the insurers are precluded from avoiding liabilities in respect of third parties so long as the insurance policy is in force on the date of the accident.

The learned Deputy Public Prosecutor cited *Jones* v. *Welsh Insurance Corporation, Ltd.*[1] In that case the insurance policy covered the use of the car for "social, domestic and pleasure purposes" and for use "in connection with his business or profession." The insured in that case was a motor mechanic and was described as such in the Schedule, but in his spare time farmed a few sheep. At the time of the accident, which caused the injuries, the car was being used to convey some sheep. In that case the court held that at the time of the accident his car was not being used in connection with his business of a motor mechanic, but for the carriage of goods in connection with a business other than that stated in the policy and as such the plaintiff could not recover in the action.

I am in entire agreement with *Jones* v. *Welsh Insurance Corporation Ltd.*, but I cannot see how the ruling in that case can be of any relevance in the present appeal, for here we are not dealing with a motor car being used for a purpose other than for which it was insured.

In *John* v. *Humphreys*[2] it was held that where the obtaining of a licence was by statute a prerequisite to the doing of some act, the onus was on the person doing the act to prove that he has a licence, it being a fact peculiarly within his own knowledge. Thus it was not for the prosecution to prove that the defendant was not the holder of a driving licence and in the absence of proof by the defendant that he was the holder of a licence, he was convicted. This ruling was also applied in *Devey* v. *Towle*[3] where it was held that the failure to produce the test certificate was clear contravention of section 162(1) and the defendant's difficulty to produce went to mitigation. The court also ruled that as to insurance, the burden of showing that the driver was insured rested on the driver.

I entirely agree that the burden of showing that the appellant in the present case was insured would have rested on him, but as I already stated earlier, the prosecution has by their own evidence and by producing Exhibit P5, clearly shown to the satisfaction of the court that the appellant was duly covered by a policy of insurance at the material time. The burden therefore never shifted to the appellant and as such he was rightly acquitted by the lower court.

I have also read the case of *T. S. B. Maniam* v. *Public Prosecutor.*[4] In that case Horne J. ruled that it was for the prosecution to prove that the policy was not in fact in force at the time of the user alleged. In the light of the decision in *John* v. *Humphreys* and *Davey* v. *Towle* it is apparent that *T. S. B. Maniam* v. *Public Prosecutor* is no longer good law.

What the position might have been before 15th January 1968 *i.e.* before section 79(j) of the Road Traffic Ordinance came into force is not a matter for me to go into for the purposes of this appeal. Section 79(j) makes it clear that although the appellant had no valid driving licence on the date in question, the insurance company are precluded from repudiating liability in respect of third party risks. For this reason I must rule that the appellant was duly covered by a policy of insurance on 21st November, 1971. I will therefore dismiss the appeal of the Public Prosecutor from the order of acquittal of the appellant on the third charge and the order of acquittal is confirmed.

Appeal dismissed.

Solicitors: *Vohrah & Tan Chee Lan.*

PUBLIC PROSECUTOR v. TAN TONG PHIEN & ANOR.

[A.Cr.J. (Pawan Ahmad J.) December 4, 1973]
[Malacca — Criminal Appeal No. 27 of 1973]

Road Traffic — Weighbridge — Person stopping vehicle not precluded from weighing the vehicle, if he is officer in charge of weighbridge — Road Traffic Ordinance, 1958, ss. 53 and 143.

The respondents had been acquitted on charges of carrying on a lorry a load in excess of the permitted weight. The lorry in this case was stopped by the Enforcement Officer of the R.I.M.V. Malacca, who was also at the material time the officer in charge of the weighbridge. The learned magistrate relying on the case of *Maasah bin Deraman* v. *Public Prosecutor*[1] acquitted the accused. The Public Prosecutor appealed.